HB 1178

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1178 (Delegate Frick, *et al.*)
Economic Matters

Commercial Law - Consumer Contracts - Prohibited Provisions

This bill prohibits several specific types of provisions in consumer contracts and requires consumer contracts to contain a clear and conspicuous statement informing the consumer of the prohibited provisions. Violation of the bill's provisions is an unfair or deceptive trade practice under the Maryland Consumer Protection Act, subject to MCPA's civil and criminal penalties.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's imposition of existing penalty provisions. If the Attorney General's Office receives fewer than 50 complaints per year stemming from the bill, the additional workload could be handled with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's imposition of existing penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines a "consumer contract" as a written agreement for the sale, lease, or provision of consumer goods, consumer services, or consumer credit between a person and a consumer who resides in the State, when such goods, services, and credit are primarily for personal, household, or family purposes. Under the bill, a person may not include or enforce a provision in a consumer contract under which a default by the consumer under a different contract triggers a default under the consumer contract. In addition, a person may not include or enforce a provision in a consumer contract that authorizes a party to the contract to accelerate a payment owed under the consumer contract, increase the interest rate payable, or alter a term of the consumer contract in any other manner adverse to the consumer, without the consumer's prior written consent, based on • a default by the consumer under another contract; • adverse information about the consumer, including information contained in the consumer's consumer credit report; or • a change in the consumer's credit score. Any such prohibited provisions included in a consumer contract in violation of the bill are void and unenforceable.

Current Law: State statutory law is currently silent on the permissibility of accelerated payment or default provisions in consumer contracts.

Under the Contracts Clause of the U.S. Constitution and corresponding decisions by the U.S. Supreme Court, new laws generally may not be created that substantially impair an already existing private contractual relationship.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are "reasonable grounds" to believe that a violation of MCPA has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of MCPA are subject to • civil penalties of $1,000 for the first violation and $5,000 for subsequent violations; and • criminal sanction as a misdemeanor, with a fine of up to $1,000 and/or imprisonment for up to one year.

Background: Many financial service companies, including credit card issuers, include provisions in consumer contracts through which the consumer contractually agrees to a practice known as "universal default." In a universal default provision, a consumer agrees that the lender may change the initial terms of loan to specified default terms in the event that the consumer defaults on a completely different loan or contract with another lender. Since 2003, the U.S. Congress has considered several bills to end this practice, and in 2007 Citibank became the first major consumer lender to eliminate its universal default provisions. It is estimated that approximately half of consumer lenders in the nation utilize universal default provisions, but most such lenders do not enforce these provisions with consistency.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2008
mll/ljm

Analysis by: Alexander M. Rzasa

Direct Inquiries to:
(410) 946-5510
(301) 970-5510